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26 **UNITED STATES DISTRICT COURT**
27 **NORTHERN DISTRICT OF CALIFORNIA**
28 **SAN FRANCISCO DIVISION**

FACEBOOK, INC., a Delaware corporation.

Plaintiff/Counterclaim
Defendant

v.

BRANDTOTAL LTD., an Israeli corporation, and
UNIMANIA, INC., a Delaware corporation

Defendants/
Counterclaim Plaintiffs.

Case No. 3:20-CV-07182-JCS

**DECLARATION OF SONAL N. MEHTA IN
SUPPORT OF PLAINTIFF FACEBOOK,
INC.'S RESPONSE TO DEFENDANTS
BRANDTOTAL, LTD., AND UNIMANIA,
INC.'S ADMINISTRATIVE MOTION TO
REFER CASE TO SETTLEMENT
CONFERENCE PURSUANT TO LOCAL
CIVIL RULE 7-11 AND LOCAL ADR RULE
3-2**

Judge: The Hon. Joseph C. Spero
Ctm: Courtroom F-15th Floor
Date: In Chambers
Time: In Chambers

1 I, Sonal N. Mehta, declare as follows:

2 1. I am a partner at Wilmer Cutler Pickering Hale and Dorr LLP. I represent Defendant
3 Facebook, Inc. in the above-captioned action. I have personal knowledge of the facts set forth in this
4 declaration and, if called as a witness, could and would competently testify to them.

5 2. Before and since the Court's TRO Order, the parties have communicated repeatedly about
6 potential resolution of this matter. By agreement of the parties, those communications were agreed not to
7 be settlement communications subject to Rule 408.

8 3. A true and correct copy of an email chain between BrandTotal and Facebook's counsel
9 dating October 20 to October 30, 2020 is attached hereto as **Exhibit A**. In this chain, Facebook pointed
10 BrandTotal to detailed information about its APIs and Ad Library and outlined the remediation process
11 that Facebook would require to resolve this matter.

12 4. A true and correct copy of an email chain between BrandTotal and Facebook's counsel
13 dating November 3 to November 20, 2020 is attached hereto as **Exhibit B**. In this chain, Facebook stated,
14 among other things:

15 Instead, Judge Spero counseled the parties to discuss ways for Defendants to obtain the
16 information they claim they need for their product offerings via established channels. Since
17 the hearing, we have repeatedly asked Defendants to review the Ad Library data and the
18 relevant APIs and developer documentation to work out how they will access the
19 information that they need through established channels. We also directed Defendants to
20 APIs that provide advertising information and to public page content access information
21 (see <https://developers.facebook.com/docs/graphapi/reference/page#public-page-data>,
22 which includes Page Public Content Access (PPCA), Page Public Metadata Access
23 (PPMA), pages_read_engagement permission, and pages_read_user_content). We have
24 received no indication that Defendants have reviewed the APIs and Ad Library to
25 determine how they will access the information they are seeking via approved means –
indeed, we have received no response to all to our latest communication identifying
possible sources for the information Defendants seek, which we sent over a week ago.
Given Defendants protestations that they are in dire financial circumstances, it would seem
that Defendants would be better served working to bring themselves into compliance with
Facebook's terms and working through approved channels to access data from the platform
than expending time and money litigating a PI that would be futile in view of the Court's
TRO ruling.

26 See November 9, 2020 Email from S. Mehta.

27 As to the substance of your request for business-to-business discussions, we continue to be
28 puzzled by BrandTotal's insistence on having those discussions before it has engaged with
the available information about Facebook APIs and the Ad Library, including the specific

channels we have directed you to. While you have said that BrandTotal has concluded that it cannot get the same information it was scraping from established channels, you have not articulated, substantively, why BrandTotal cannot offer the services it seeks to offer to its customers based on information that is available. That may require BrandTotal to do some engineering work to design its tools to work within the bounds of the Facebook APIs. But it is incumbent on BrandTotal to make the effort, as thousands and thousands of other developers do, to develop its products and services to function within terms and policies that govern the Facebook platform. For obvious reasons given the number of developers and apps that engage with the Facebook platform, Facebook is not a position to do that development work for developers. It has, instead, created developer documentation and other resources to enable developers to build their own tools. We have repeatedly directed you to that information, but have received no indication that BrandTotal has sought to use that information to bring itself into compliance with Facebook's terms.

See November 20, 2020 Email from S. Mehta.

5. A true and correct copy of the continued email chain between BrandTotal and Facebook's counsel dating November 20 to December 15, 2020 is attached hereto as **Exhibit C**.

6. On Friday December 18, 2020, I and other counsel for Facebook had a meet and confer videoconference with counsel for BrandTotal including Mr. Techsler (who participated by telephone), Ms. Fussner, and Mr. Taylor. During that call, the parties discussed at length the ongoing back-and-forth about settlement. Counsel for Facebook repeated its prior suggestion that BrandTotal review the APIs and Ad Library to determine how it could offer services to its clients within authorized channels. We also stated that, if BrandTotal would do the leg-work to review the information Facebook has provided about its APIs and Ad Library to see how BrandTotal can provide services to its clients by accessing Facebook's platform through approved channels, Facebook is willing to work with BrandTotal to discuss the process for remediating its conduct and potential settlement of this lawsuit. I also explained to BrandTotal's counsel that Facebook has entire teams of people working on different aspects of its APIs, and that it would be difficult to figure out who to even include in a business-to-business meeting until BrandTotal did the necessary leg-work to determine what information it needs to provide its services to customers that it cannot obtain through authorized channels. I and my co-counsel also explained again that BrandTotal may need to do some engineering work to figure out how to offer services to its customers based on the information that is available through authorized channels. During the call, BrandTotal's counsel, Ms. Fussner informed counsel for Facebook that BrandTotal had looked at Facebook's APIs and Ad Library to

1 see if BrandTotal could obtain information for its services through authorized means and had concluded
2 that certain information was not available. Counsel for BrandTotal said they would be producing that
3 information as part of the parties' preliminary injunction-related discovery and also agreed to provide it
4 separately to facilitate discussions. I and co-counsel agreed that we would review the information and
5 discuss it with Facebook.

6 7. On Sunday, December 20, BrandTotal's counsel shared two documents relating to its
7 analysis of Facebook's APIs with Facebook's counsel. BrandTotal unilaterally designated those
8 communications as confidential and Subject to Rule 408. On December 21, I responded and asked for
9 permission to share the information with in-house counsel at Facebook so we could follow-up. I exchanged
10 emails with counsel for BrandTotal who ultimately agreed that afternoon that I could do so. That evening,
11 without any further communication or correspondence on the subject, BrandTotal filed the instant motion
12 for administrative relief.

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14
15 Dated: December 28, 2020

WILMER CUTLER PICKERING HALE AND
DORR LLP

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17 By: /s/ Sonal N. Mehta
SONAL N. MEHTA

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19 *Attorney for Plaintiff/Counterclaim Defendant*
Facebook Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2020, I electronically filed the above document with the Clerk of the Court using CM/ECF which will send electronic notifications of such filing to all registered counsel.

Dated: December 28, 2020

By: /s/ Sonal N. Mehta
SONAL N. MEHTA

Attorney for Plaintiff/Counterclaim Defendant
Facebook Inc.